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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 234

FEDERAL TRADE COMMISSION, *Petitioner*,

v.

MANDEL BROTHERS, INC.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

Mandel Brothers, Inc., submits that the Court of Appeals did not err in its conclusions on the questions here involved, and that the judgment of that court should be affirmed.

QUESTIONS PRESENTED

The respondent respectfully suggests that the questions presented in this proceeding may be more accurately stated as:

1. Whether the sale slip given to the consumer upon the purchase of a fur product at retail is within

the definition of "invoice" in the Fur Products Labeling Act.

2. Whether the Federal Trade Commission, in issuing cease and desist orders against failure to label fur products properly, may proscribe labeling omissions of which it has concurrently "acquitted" the respondent.

STATEMENT OF THE CASE

The statement of the case in the brief for the Commission appears to be adequate for purposes of this proceeding, except for certain details in the portion dealing with the proper scope of the order with respect to labeling violations. For reasons set forth in the following paragraphs we suggest two changes in the statement:

(1) The second issue herein is whether the Commission properly included in its cease and desist order specific proscription of labeling deficiencies which it found had not been committed. It was found that certain labeling omissions had occurred. The quality and character of those omissions may aid in estimating the probability of occurrence of other omissions which the Commission found had not previously occurred, and thus may bear upon the propriety of enjoining omissions of the latter type. Accordingly, the respondent would amplify the statement in the first sentence in the second paragraph on page 5 of the Commission's brief so as to set forth the following information:

> The Commission found 12 instances of failure to label the product with the correct name of the animal producing the fur. They consisted of garments which were labeled "black seal" or "Alaska seal" instead of "fur seal"; "Persian" instead of "Persian lamb"; "tropical seal" instead of "hair seal"; and "Stuart hybrid" or "silver blue" instead of "mink." On one "dyed fox" garment, the species of fox was not named. (R. 48, 49)

The Commission found 15 instances of failure to disclose that the product was bleached, dyed or otherwise artificially colored. They included garments which were labeled as "black seal" or "black Persian lamb" without reference to having been dyed; there was testimony that those furs are not used commercially in black in their natural state, but are invariably dyed. Five muskrat coats bore no reference to having been dyed. Four mole jackets were labeled as "tipped" instead of "dyed" or "tip dyed." (R. 51, 52)

The Commission found 58 instances of failure to show the country of origin of imported furs. These consisted of about 15 cases where fur origin was omitted; a few garments on which the fur origin was stated in adjective form, e.g., "Russian" instead of "fur origin: Russia"; and 37 coats on which the fur origin was stated as "Outer Mongolia." The criticism on the last group was that Outer Mongolia is not a country but is a part of China.* (R. 50)

(2) The first sentence in the first full paragraph on page 6 of the brief for the Commission, describing the cease and desist order, may be susceptible of the interpretation that the language of the order directed respondent to cease and desist from "Misbranding fur products by: * * * Failing to affix labels to fur products showing the six categories of information required by section 4(2) of the Act." As a matter of fact, the order recited (in language closely paralleling the statutory language) each of the six categories of information without which a label is deficient, i.e., the three in which deficiencies had been found and also the three in which deficiencies had not been found. (R. 29) In the interest of exactitude, said

*Compare the Commission's Rule 12(b): "The term 'country' means the political entity known as a nation. Colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries and the name thereof shall be deemed acceptable in designating the 'country of origin' unless the Commission shall otherwise direct." (Rules and Regulations under the Fur Products Labeling Act, Title 16 C.F.R. 301.)

sentence in the Commission's statement of the case should read:

> Although the examiner recommended that the cease and desist order be limited to the three categories of information found to have been omitted, the Commission's order directed respondent to cease and desist from "Misbranding fur products by: 1. Failing to affix labels to fur products showing: * * *" followed by a particularization, in language similar to the statute's, of each of the six categories of information required by section 4(2) of the Act.

SUMMARY OF ARGUMENT

I

A. The Court of Appeals properly held that the sale slip given by a retailer to a consumer upon the purchase of a fur garment is not an "invoice" as that term is defined in the Fur Act. The definition limits the term to statements given, in connection with commercial dealings in fur products or furs, to persons who are engaged in dealing commercially therein.

The holding of the Court below is not contrary to the purpose of the Fur Act. The definition of invoice demonstrates a purpose to apply the invoicing provisions to the area of commercial dealings in fur products. The total purpose of the Act is to protect consumers and others against such practices as may be appropriate to their respective needs.

To fall within the statute's requirements, an invoice must be one given to a "purchaser * * * who is dealing commercially in fur products or furs." The clause in the definition, "who is engaged in dealing commercially in fur products or furs," modifies each term in the preceding enumeration of "purchaser, consignee, factor, bailee, correspondent, or agent, or any other person." Similar modifying clauses were so construed in *United States* v.

Standard Brewery, 251 U.S. 210, and in *Porto Rico Railway Company* v. *Mor*, 253 U.S. 345.

This construction of the definition does not in any way impair the full effectiveness of the Fur Act. The Act requires that furs be accompanied by statutory invoices from their origin in commerce down to the point of manufacture of the pelts into fur garments. Fur products are then to be accompanied by statutory labels from the manufacturer into the hands of the consumer. Fur products are to be accompanied by statutory invoices from the manufacturer to the retailer so that the wholesaler and retailer may be certain of the adequacy of the label which they pass along.

To require that, after the consumer has purchased the fur garment under the protection of the statutory label, she must also be given a statutory invoice with the same information, would be a useless duplication.

B. The Court of Appeals held that the statutory definition of invoice was plain and unambiguous, and that reference to the legislative history of the Fur Act was not necessary. If reference thereto be deemed desirable, it will be found that the legislative history squarely supports the construction applied by the Court of Appeals. In its earliest form this legislation required labeling of imported furs and labeling of fur products and did not provide for mandatory invoicing. To meet the industry objection of unworkability, and in conformity with the recommendation of the witness from the Federal Trade Commission, the scheme of the Act was revised to put its emphasis on labeling fur products from the manufacturer into the hands of the consumer, with the accuracy of that disclosure reinforced by invoicing. The legislative history gives no indication that Congress intended to require a statutory invoice from the retailer to the consumer.

C. This litigation is the first square challenge to the Commission's "administrative construction" of the Fur

Act's invoicing provisions. It cannot be said that that construction is long and consistent. The Act became effective only in August 1952. Moreover, during Congressional consideration of this legislation the Commission's expressed comment was that the law would require labeling of fur products and invoicing of furs, and there was no suggestion of its present enlarged view of the invoicing requirements.

D. The retailer's sale of a fur product to a consumer is a local transaction, not in interstate commerce. To subject that sale to the Fur Act's invoicing requirements would not be a valid exercise of Federal power. *Schechter Corporation* v. *United States*, 295 U.S. 495.

The case of *United States* v. *Sullivan*, 332 U.S. 689, upheld a requirement that branding of an article, established while the article was in interstate commerce, might not be undone in an ensuing intrastate transaction. That doctrine does not support a requirement that there be a new, affirmative action taken with respect to an intrastate transaction merely because the subject article has previously been in interstate commerce.

II

The Fur Act requires disclosure of six items of information on the label which must be attached to a fur product. The Commission found that respondent had violated the Act by omissions of three of those items of information, but that there was no evidence of omission of the other three. Nevertheless it proscribed the omission of all six requirements, separately enumerating each one in its order. The Court of Appeals said that it could not affirm an order requiring respondent to cease and desist from doing that which the Commission found it did not do. It modified the Commission's order accordingly.

Respondent objects to the proscription of violations of which it was acquitted. A cease and desist order carries

the definite implication that the violations which it prohibits are violations which have occurred. It would be injurious to respondent's business if a Commission order caused the public to believe, contrary to the fact, that the store had sold garments containing used fur or inferior parts of fur and had concealed it. There is nothing to show any threat that the violations of which respondent was acquitted might be expected to occur in the future.

The holding of the Court of Appeals does not limit the Commission to proscribing the precise violations found by it, but goes only so far as to forbid proscribing violations of which the Commission has concurrently acquitted the respondent. This result will not impede the Commission in any proper function.

ARGUMENT

I. THE SALE SLIP FROM A RETAILER TO THE CONSUMER UPON THE PURCHASE OF A FUR GARMENT IS NOT SUBJECT TO THE INVOICING REQUIREMENTS OF THE FUR ACT; IT IS NOT AN "INVOICE" AS THAT TERM IS DEFINED IN THE ACT.

The Fur Products Labeling Act lays down certain requirements with respect to the giving of invoices upon the sale of fur products. The term "invoice" as used in the Act is narrowly defined therein.

The Commission held that the sale slips which Mandel Brothers gave to customers upon the retail sales of fur garments were invoices within the Act and that they did not conform to the Act's requirements for invoices.

The Court of Appeals for the Seventh Circuit decided that such a sale slip is not an invoice as that term is defined in the Fur Act, and struck down the Commission's order insofar as it applied to invoicing requirements.

We believe that the holding of the Court of Appeals is clearly right, that its interpretation is squarely in accord with the legislative history of the Act, and that no contrary

administrative construction can override the plain language of the Act and the plain purport of its history.

A. The statutory definition of "invoice" excludes invoicing from a retailer to the consumer, since the consumer is not "engaged in dealing commercially."

The Fur Act, in its section of definitions, provides:

> Sec. 2. As used in this Act—
>
> * * * * *
>
> (f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

The Court of Appeals for the Seventh Circuit held that an invoice as defined by the statute is "clearly not a sales slip at the retailer-consumer level"; a customer purchasing from a retailer is not "engaged in dealing commercially in fur products." That court found no room for doubt, but declared the Act's definition of invoice to be "plain and unambiguous." It aptly said (R. 70-71):

> * * * However, when the statute says purchasers or any *other* person who is so engaged [in dealing commercially in fur products or furs] the limitation clearly applies to *purchaser*. No other meaning is possible particularly when "invoice" is also defined by the Act as something *which is issued in connection with any commercial dealing* in fur products or furs.

We submit that no other reading of the definition would be proper. The very presence of the definition in the Act indicates an intent to put bounds on the Act's requirement that an invoice be given. The language of the definition emphatically narrows that requirement to the area of

"commercial dealing"—and to the area of such dealing between parties who are "engaged in dealing commercially." The ultimate consumer is not so engaged.

That clear language of the definition is wholly consonant with the Act's purpose to protect the consumer from deception in her purchase of fur products. The design of the Act is to insure that complete and correct information is available to her at the point of purchase—it requires that the garment carry a fully detailed label.

The retail purchaser's protection is the label on the fur product. She has the garment before her, she has had an opportunity to see the label, and she has decided upon the purchase—all before the sale slip is prepared. The sale has been agreed upon and the transaction is concluded. The sale slip can add nothing to her knowledge of the garment; its only function for her will be in connection with paying the bill.

On the other hand, a useful purpose may be served by application of the invoicing requirements to the chain of transactions whereby the goods come to the retailer. With the required information before him on the invoice, the retailer is in a position to see that a proper label is affixed to the garment.

We submit, therefore, that the Act's definition of invoice does not include the sale slip which may be given at the time of the purchase to the ultimate consumer.

Petitioner's brief argues that the interpretation which the Court of Appeals gave to the definition is contrary to the purpose of the Act. Petitioner would have a postulated purpose override the language of the Act, instead of deriving the purpose from the language. The purpose of a statute is to be learned from what the statute provides, and this Act's definition of invoice is part of what must be weighed in determining the Act's purpose.

Petitioner points to the title of the Act as fixing its purpose. The title is: "An Act to protect consumers and others against misbranding, false advertising, and false invoicing of fur products and furs." Any title is necessarily general, and recourse must be had to the law itself to see what ends are to be accomplished and how; only in the law are the purpose and the means adequately disclosed.

Moreover, whatever weight may be given to the title of this Act, petitioner is on unsure ground when he spells out of it a purpose to protect consumers against false invoicing of fur products. To distill that purpose, he must read the title as declaring a purpose to protect each of the Act's beneficiaries against each of the three forbidden practices both as to furs and as to fur products. That proves too much. Reading the title in the manner petitioner would have, we would also find it declaring a purpose to protect consumers against misbranding of furs. But there is no such purpose, because the consumer is concerned with fur products not with furs; and the Act does not require that furs be branded, i.e., labeled. Again, if the word "others" in the title has any significance whatever, it must mean others who are concerned with the handling of furs and fur products. Petitioner's mode of reading the title, accordingly, would have the title show a purpose to protect the dealer in raw furs or the processor of furs against misbranding of fur products and furs. No one will contend that the Act does any such thing; furs are not branded, and the fur dealer is not concerned with fur products. It follows that the most we can get out of the title is a declared purpose to protect consumers and others against such of various practices as may be appropriate to their respective interests. Only in the terms of the Act will we find who is protected against what.

Petitioner's brief contends that the Court of Appeals disregarded the purpose of the Act as reflected in its legis-

lative history. But the court below said that the language of this statute is "clear and unambiguous," making it inappropriate to refer to the legislative history. It cited the decision in *Railroad Commission of Wisconsin* v. *C.B.&Q.R.Co.*, 257 U.S. 563, 589, where this Court said:

> • • • Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this can not control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

The legislative history of this Act is discussed fully in another section of this brief (*infra*, pp. 18-31). If reference to that history be deemed necessary, it will be found to demonstrate an intent and purpose in complete harmony with the interpretation which the court below gave to "invoice." There will not be discovered in the legislative history any intention to require that fur products be invoiced to the ultimate consumer.

In its argument that the court below ignored the purpose of the Act, petitioner's brief (p. 14) quotes fragmentarily from *Black* v. *Magnolia Liquor Co.*, 355 U.S. 24, *Flemming* v. *Florida Citrus Exchange*, 358 U.S. 153, and *United States* v. *Bramblett*, 348 U.S. 503. Those cases did not involve the question which we have here. As for their approach to the general problem of statutory construction, we observe that the *Florida Citrus* case says, at page 166:

> Here again, in our construction of this explicit Act, we must be sensitive to what Congress has written, and recall that "It is for us to ascertain—neither to add nor to subtract, neither to delete nor to distort."

Applying theoretical rules of statutory construction, petitioner's brief argues (p. 15) that the clause in the

definition of invoice, "who is engaged in dealing commercially in fur products or furs," applies only to "any other person" and does not apply to "purchaser, consignee, [etc.]." In support of the so-called rule of the "last antecedent," the brief cites (*inter alia*) 2 Sutherland, *Statutory Construction*, 448-449, 3d Ed., 1943. That work, at the point cited, goes on to say of the rule:

> But where the sense of the entire act requires that the qualifying words apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent. Thus it is apparent that *the rule* relating to relative or referential terms *is of no great force* and will be applied only when its application is consistent with the legislative intention. (Emphasis added.)

The inconsistency and inapplicability of such a theory of construction is apparent from an analysis of the very definition which is under examination. There are other limiting clauses in the definition of invoice. They say "which is issued in connection with any commercial dealing" and "[which] describes the particulars." They follow the words "written account, memorandum, list, or catalog." On petitioner's theory of statutory construction, those clauses would "be restrained to the last antecedent," which is the word "catalog." Any such interpretation would of course be rejected as contrary to common sense. But it would be most peculiar if, within the bounds of a single sentence, two limiting clauses were held to apply to all of their antecedents and one to apply only to its last antecedent.

In *United States* v. *Standard Brewery*, 251 U.S. 210, this Court construed a statutory provision the structure of which closely resembles the structure of the Fur Act's definition of invoice, and held that the limiting clause applied to all its antecedents. That case involved a statute forbidding the use of "grains, cereals, fruit, or other food

product * * * in the manufacture or production of beer, wine, or other intoxicating malt or vinous liquor for beverage purposes." The defendants were engaged in making non-intoxicating beer and were indicted under the statute. The indictment was quashed by the district court and the Supreme Court affirmed, rejecting the argument that the qualifying clause containing the word "intoxicating" applied only to malt or vinous liquor. The Court held that the qualifying clause containing the word "intoxicating" also applied to the word "beer" and since the defendants were not engaged in the manufacture of intoxicating beer, their conduct did not infringe the statute. The Court said:

> * * * It is elementary that all of the words used in a legislative act are to be given force and meaning (citing cases); and of course the qualifying words "other intoxicating" in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them or that it did so without intending that they should be given due force and effect. The Government insists that the intention was to include beer and wine whether intoxicating or not. If so the use of this phraseology was quite superfluous, and it would have been enough to have written the act without the qualifying words. (p. 218)

In the course of his opinion in *Standard Brewery*, Mr. Justice Day quoted from Lord Bramwell in a House of Lords case as follows (at 218):

> As a matter of ordinary construction, where several words are followed by a general expression as here, which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all.

To similar effect is the holding in *Porto Rico Railway Company* v. *Mor*, 253 U.S. 345. That case involved construction of a statute which conferred jurisdiction on a federal district court in actions "where all of the parties

on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State * * * of the United States not domiciled in Porto Rico * * *." Mor, the plaintiff, was a Spanish subject, domiciled in Porto Rico. He contended that the qualifying clause "not domiciled in Porto Rico" only applied to the last antecedent (citizens of a State of the United States) and did not reach back to the "subjects of a foreign State." The Court, however, held otherwise, saying (at 348):

> No reason appears why the clause "not domiciled in Porto Rico" should not be read as applying to the entire phrase "citizens or subjects of a foreign State or States, or citizens of a State * * *." When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.

Petitioner's brief argues at page 14 that the Commission's view of the invoicing provisions should be sustained because that construction "is necessary to carry out the Congressional purpose" demonstrated in the title and the legislative history. The brief contends at page 12 that "carving out such an exemption" would "defeat the congressional declaration of purpose and render the Act ineffective in a major respect."

We have already shown that neither the title nor the legislative history shows the purpose on which the Commission relies. We urge once more that it is doubly erroneous to assume a purpose and then construe so as to implement that assumed purpose. Rather, the statutory provisions under consideration are to be weighed, along with all the rest of the Act, in determining what is the purpose of the law. The purpose which is derived from examination of the whole law will help to throw light on any doubtful portions. In the present case, it is plain that the Act simply does not apply its invoicing require-

ments to the sale slip from the retailer to the consumer and that there is nothing in the entire Act to suggest a contrary purpose.

Petitioner calls this "carving out such an exemption." There is no more reason for calling this result an exemption from invoicing than there is for saying that fur dealers and processors are "exempt" from labeling. In the same vein, the brief at page 22 says that it would be "anomalous" to apply the advertising and labeling requirements to retail transactions and not also require a statutory invoice to the consumer. Is it also anomalous to require that furs be invoiced and not require that they be labeled? The fact is simply that some requirements are imposed at one point and other requirements at another.

There remains the contention that the holding of the Court of Appeals would "render the Act ineffective in a major respect." The brief puts it at page 15 that there would be created "a serious gap in the regulatory scheme."

We earnestly submit that these are groundless alarms.

Viewing the regulatory scheme as a whole, the Act provides complete and adequate coverage of the fur business. Here is what it does:

1. Furs must be accompanied by statutory invoices at each step of delivery or transfer to a person dealing commercially in furs.

2. Fur products must bear statutory labels, from the hands of the manufacturer into the hands of the ultimate consumer; an intervening wholesaler or retailer may remove a label only if he substitutes a new and proper label.

3. Fur products must be accompanied by statutory invoices at each step of delivery or transfer to a person dealing commercially in fur products.

This means that furs have identifying statutory invoices from their entry into commerce down into the hands of the manufacturer. When the furs, thus identified, are made into a fur product, the manufacturer must attach a statutory label to the garment. Subsections 3(d) and (e) of the Act specify that that label must remain on the product until delivery to the ultimate consumer, except that an intervening wholesaler or retailer may substitute a new label which conforms to the statutory specifications.

Thus, each person in the sequence, from the dealer in raw skins down to the purchaser of the finished garment, has his protection in the form of a statutory invoice or a statutory label. The wholesaler or retailer has, in addition to the label on the fur product, an invoice of the fur product; this enables him to make certain that the garment bears a proper and adequate label. The end result is the garment delivered to the consumer with a label meeting the requirements of the statute.

There is no gap. There is no point at which the Act does not apply effectively.

Petitioner's brief at page 22 suggests that the Act must be viewed as requiring a statutory invoice from the retailer to the consumer because "an invoice is such an important element in effectively protecting retail purchasers." But the whole scheme of the Act is to protect by requiring true disclosure of pertinent facts, and an invoice discloses nothing that is not disclosed by the label. The consumer never sees the bill until after the purchase has been made. She may have seen the advertising; the statute requires that it have stated certain facts. She examines the garment; it is required to bear a label setting forth the facts. It is only after she has decided and has purchased that the bill is prepared. To require that she have a statutory invoice setting forth the same facts as are on the label would be merely cumulative. No one can say that a consumer is more likely or is less likely to keep

a bill than she is to keep a label. And it verges on the ridiculous to say that Federal law should require giving the consumer the same information on each of two pieces of paper because she is likely to lose one piece.

But the brief at page 26 quotes the Commission to the effect that an invoice to the consumer "may serve as a documentary link connecting the sale of specific fur products back through the retailer's records with advertisements therefor."

The expectation of achieving any end in the administration of the Act by so "connecting" is altogether unrealistic.

Ignoring the fact that the label would serve the purpose just as well as the invoice, let us assume that an invoice for a fur coat does enable the Commission to link the sale of that coat back through the retailer's records with advertisements for that coat. What has been accomplished thereby?

The advertising is not thereby rendered any more accessible to the Commission than it otherwise was. The representations in the advertising may or may not be in conformity with the Act's requirements; if they are not, there is a violation quite irrespective of what has been said on the invoice. If the representations on the invoice do not comply, there is a violation regardless of what the advertising says.

Whether the representations in the invoice are the same as the representations in the advertising is not an issue on which the Act bears. If there is a discrepancy between the representations in the advertising and in the invoice, that fact would give rise only to a controversy between the customer and the retailer. Such a controversy is a matter solely for local law, and is not anything with which the Commission is authorized to concern itself.

In short, to provide for a statutory invoice from the retailer to the consumer would be a useless duplication, and the Act does not require it.

The holding by the Court of Appeals gives complete scope and effect to all of the Act; it gives full weight to each of the specifications in the definition of invoice, and to all the requirements of invoices as so defined in the law. The Act is fully operative and fully effective over the entire range of its objectives. We submit that the decision of the court below should be affirmed.

B. The legislative history of the Fur Products Labeling Act squarely supports the interpretation of the court below, that a sale slip at the retailer-consumer level is not an invoice within the Act.

In holding that the sale slip given by a retailer to the ultimate consumer is not an invoice within the Act, the Court of Appeals declared the statutory definition of "invoice" to be plain and unambiguous. Accordingly, it found no occasion for recourse to the legislative history of the Act. However, if any doubt be asserted as to the meaning of the definition, that history makes it abundantly clear that the interpretation of the Court of Appeals is correct.

The Fur Products Labeling Act is the result of legislative consideration and action extending over several years, during the 80th, 81st and 82nd Congresses. The definition of invoice in section 2(f) of the Act is exactly the same as the definition of that term in section 2(e) of H.R. 3734 as reported out of committee in the 80th Congress, and exactly the same as section 2(e) of S. 2703 as introduced in the 80th Congress. The mandatory invoicing provisions of the present law are substantially the same as the invoicing provisions of the bills just mentioned, differing only in the specification of what must be shown on the invoice.

Once formulated as above set forth, these two features—the definition of invoice and the mandatory invoicing provisions—were unchanged as the legislation went through intervening bills and consideration to become the present law.

Accordingly, clear indication of Congressional intent is to be found in what was said and done when these two features first came into the legislation.

In the 80th Congress, H.R. 3734 was introduced by Representative O'Hara on June 5, 1947. A companion bill in the Senate, S. 1388, introduced the same day by Senators Johnson and McCarthy, was substantially identical. They were strictly labeling bills. Those bills contained no definition of the term invoice. They specified that certain representations would be deemed false invoicing, but they did not require the giving of any invoice (except Customs invoices on imports). The bills required the labeling of fur articles beginning with manufacture or introduction into commerce of such fur articles, the labels to remain until sold to the consumer. Most drastic, those bills required the labeling of each skin of any imported fur before its release from Customs, and demanded that the same label be put back on each such skin after each step in its processing until such imported fur was manufactured into a garment.

At the hearings on H.R. 3734, April 6 and 7, 1948, the only witnesses favoring the legislation were Henry Miller, Director of the Bureau of Trade Practice Conferences and Wool Act Administration of the Federal Trade Commission, and two representatives of the National Board of Fur Farm Organizations. The fur farmers complained of the use of fanciful designations in naming furs, for example, "mink-blended muskrat", to designate muskrat fur dyed to resemble mink. They claimed that consumers were deceived.

No consumer witnesses appeared.

The witnesses from the fur industry were dealers in skins and processors and manufacturers. They objected that the bill would subject imported furs to such impossible burdens as to prevent the importation of most raw furs, and thus would give a monopoly to the domestic fur farmers. They declared that it would be physically impossible to open and repack the bales of imported furs at Customs, put a tag on each skin, and maintain that tagging all through the complicated processes of dressing raw skins and dyeing them. They did not discuss the bill's scant invoicing provisions.

Petitioner's brief at page 17 says that "industry spokesmen almost unanimously endorsed legislation requiring full disclosure on retail invoices as the simplest and most effective way to protect consumers from deceptive practices." At pages 18-19 the brief sets out a medley of words and phrases from their testimony at the hearings on H.R. 3734. Whatever the proposals of those witnesses may be worth, these references to them produce a badly distorted view of what occurred. If we must estimate what weight the legislators may have given to the witnesses, we must look at their testimony in its context.

All of those witnesses were appearing in bitter opposition to any legislation at all. As one of them said, "We came down here faced with a bill which, to us, looked very vicious, and we came here to oppose it and to oppose it very violently." (Hearing before the House Committee on Interstate and Foreign Commerce, 80th Congress, on H.R. 3734, p. 86.)

Those witnesses did not have before them a bill which required invoicing. It was a labeling bill. They complained that the labeling requirements were ruinous and would be of no benefit to anyone; they contended that the

Commission could accomplish all needful ends under its existing authority. (*id.*, pp. 64, 80, 97-102, 124-127, 147, 151, 162, 170, 177.)

It is obvious from their testimony that, in suggesting the remedy of invoices to the consumer, they were desperately advancing any alternative that might save them from the burden of maintaining labels on imported skins during the various processing steps.

One of those witnesses (Benedek, from whom petitioner quotes) said, "* * * I am heartily in favor of requiring a disclosure on the invoice with the sale of the garment describing everything that we know about it, the name of the animal and the origin of the fur, if we have it, and anything else which will be helpful to the consumer." (*id.*, p. 154.) But on the next page he said, with respect to giving the same information on a label, "It must be perfectly obvious that the label is of no value whatever to the consumer insofar as it discloses the name of the animal which produced the fur, even though that name has never been associated with the fur, or the place where the animal was born." Later, he said, "* * * I see infinite possibilities for harm in the label, and on the other hand a great possibility for benefit to the consumer in requiring a complete disclosure of the name and origin of the fur in the invoice * * *." And, "I would say that the label would be of such little benefit to the consumer; and would be a possibility for detriment to the consumer, that I would much sooner that you provide that we must render him an invoice truthfully describing his purchase." (*id.*, p. 157.)

Another witness (Weber, to whom petitioner refers) was even more frank about his motives, saying, "We endorse the suggestion that that affirmative disclosure be made in the form of invoices in preference to tagging, because the invoicing would obviate the necessity of the

burdensome accounting and record-keeping practice that would be placed upon the jobber." (*id.*, p. 168.)

It was in response to the testimony of those witnesses that Mr. Miller, from the Federal Trade Commission, was called back to the stand by Congressman O'Hara, the sponsor of the bill. (Hearing before the House Committee on Interstate and Foreign Commerce, 80th Congress, on H.R. 3734, p. 199.) In the course of his discussion, Mr. Miller said, at page 202 of the above hearing:

> Representations have been made here about the invoice. Now, having a good invoice is a help. I feel, however, that it by no means can reach a situation as simply and as effectively as a tag.
>
> An invoice is a thing that takes place after the sale has been consummated. It is locking the barn door after the horse has been stolen, in a way.
>
> A label is prophylactic; it is preventive. The consumer comes in, and she sees a whole rack of coats there. She may be in doubt as to what she wants to buy. Some of them are not in doubt. Some come in there, and they ask for a particular type of coat. When they see the label they are apt to be apprised of the truth at the time.
>
> It is important to them to have the truth before they actually make the contract to purchase.
>
> With all due respect to the fact that a good invoice is a good thing to have, I feel that a good label on the product itself simply giving the truth is a more effective remedy.
>
> It is not an easy thing for a retailer, a retail store, to sit down and execute an invoice for every purchase. A manufacturer sends invoices because he ships in quantity. But a retail store will make many sales during the day, and it would be rather irksome and cumbersome, I think—I fear—if the retail store were required to execute an invoice at every sale at the time of sale.

Someone may say, "They can mail the invoice a little later." That is possible. But there, again, I say the whole thing involves considerable more effort, considerable more machinery, than to have a simple tag on the article itself.

Many of the same witnesses testified similarly at hearings later that month on S. 1388 (the Senate's companion bill) before a subcommittee of the Senate Committee on Interstate and Foreign Commerce. Mr. Miller, from the Federal Trade Commission, was among the witnesses.

In the course of those hearings, Senator McCarthy asked Mr. Miller whether it would be feasible to meet the industry's objections by providing, instead of individual labeling of the pelts up to the manufacturer's level, that it be handled by invoicing. Mr. Miller said:

> Covering the necessary information in an invoice rather than in a label with respect to the raw fur from the time either imported or introduced into the channel of commerce, and trapped in this country, up through the various stages until it becomes a dyed and dressed pelt, and is then produced into a fur coat, for example, up to that point, I think it can be adequately covered, the necessary information by invoice; consequently, dispense with the necessity of attempting to mark the individual pelt.
>
> * * * * *
>
> When the manufacturer converts the thing into a coat, makes, for example, the muskrat coat, a tag or label showing the fur that is in that coat is then to be required on the product, and from there on it remains with the product. It is a finished product and ready for the channels of trade that takes it on to the ultimate consumer in that form.

(Hearings before Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 1388, 80th Congress, pp. 160-162.)

Later in the same hearings, at pages 185-186 thereof, there was the following discussion:

> SENATOR MCCARTHY: I think you are talking about two different things. What Mr. Miller proposes is that up to the labeling point you have an invoice for the protection of the men along the way so you can trace it back and find out where and when the deception started.
>
> Once the manufacturer obtains the article, it is then labeled, and *from that point on, you are not concerned with any invoice.*
>
> MR. MILLER: That is right.
>
> SENATOR MCCARTHY: You are merely substituting *invoice prior to manufacturer's level* to make this simpler of enforcement, less expensive.
>
> MR. MILLER: That is true.

(Emphasis added).

Those were the hearings which were to determine the ultimate form of the legislation now under scrutiny. The answer on this invoicing issue in the case at bar depends on which course the legislators then followed. They had heard industry spokesmen object to any legislation at all, bitterly oppose requirements for labeling furs in the pelt form, and advocate invoicing to the consumer as an alternative. They had heard the witness from the Federal Trade Commission suggest invoices for furs up to the point of manufacture so that every one up to that stage would know what he was handling; and labels on manufactured fur articles for the protection of the consumer.

What course did the legislators choose?

The month after the hearings, the House Committee on Interstate and Foreign Commerce reported H.R. 3734 in a form which the report characterized as a "substitute"

bill.* As so revised, the bill was the same in structure and similar in content to what later became the present law. The reported bill required the labeling of fur products and required the invoicing of furs and fur products. It defined the term "invoice" in precisely the same language as now appears in the Act. That original definition was:

> SEC. 2. As used in this Act—
>
> • • • • •
>
> (e) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

The Committee report accompanying the revised bill, submitted by Mr. O'Hara, said:

> The committee substitute is generally modeled after the Wool Products Labeling Act of 1939, and requires mandatory *invoicing of furs* and *labeling of fur products* moving in interstate or foreign commerce to show the true English name of the animal; its country of origin; the fact that the garment contains used fur if such is the case; the fact that the fur is dyed if such is the case, and the fact that the fur product is composed of bits and pieces instead of whole skins if such is the case.
>
> • • • • •
>
> The committee substitute makes it unlawful and declares it an unfair and deceptive act and practice

* The Senate Committee did not report out S. 1388. However, its authors, Senators Johnson and McCarthy, introduced a new bill, S. 2703, which was substantially identical with H.R. 3734 as reported in the House. The new S. 2703 was introduced in the Senate on May 19, 1948; the revised H.R. 3734 was reported in the House on May 20, 1948. The obvious assumption is that both bills were written in the light of the testimony above referred to in the April 1948 hearings before the House Committee and the Senate Subcommittee.

within the meaning of the Federal Trade Commission Act to market in interstate or foreign commerce either *furs* or *fur products* which are not *respectively invoiced and labeled* to show the true English name of the animal, its origin, and other factual information affecting the value of both furs and fur products.

* * * * *

With respect to *furs*, the information required by this legislation is to be passed on by the means of *invoices*. In respect to *fur products, labeling* is required which begins with the manufacturer of the fur product. Removal of the manufacturer's label is forbidden, until the article reaches the ultimate consumer.

(House Report No. 2004, 80th Congress, pp. 2, 3; emphasis added.)

The bills in subsequent Congresses retained the same definition of invoice; they retained the same requirements of labels for fur products and of invoices for furs and fur products. The Committee reports on the subsequent bills set forth the same descriptions of the terms of the bills—"invoicing of furs and labeling of fur products"—as did also the letters of comment from the Federal Trade Commission to the respective committees. (The legislative history of the bills, through the 80th, 81st and 82d Congresses, is described in detail in Appendix A to this brief, wherein will also be found pertinent excerpts from the committee reports and F.T.C. letters.)

The contention on behalf of the Commission is that the law requires that fur products be both invoiced and labeled all the way from the manufacturer into the hands of the consumer. That might be true except for the statutory definition of the term invoice, which says "in connection with any commercial dealing" and "who is engaged in dealing commercially." It will hardly be disputed that the definition evinces clear intent to stop short

at some point. The problem in this litigation is to determine what is that point.

Section 3 and section 5(b) as they originated in the 80th Congress and as they stand in the present Act appear to carry invoicing to some point beyond the manufacturer. We contend that, under the definition of the term invoice, that point is somewhat short of the consumer—who is not dealing commercially.

The testimony of the witness from the Federal Trade Commission doubted the value of invoicing to the consumer; Mr. Miller said a label would give her better protection. He advocated invoicing of furs until they reached the manufacturer, and advocated labeling of products, from the manufacturer into the hands of the consumer. The ensuing legislation defined invoice to include statements given between persons dealing commercially—both the person giving the invoice and the person receiving the invoice. The language of the reports, even if the language be characterized as a "shorthand description" (Commn. Brf., p. 23), unmistakably emphasizes invoicing with respect solely to furs and not products.

The obvious interpretation—and one which is consistent with all of the legislative provisions and with all that is said in the reports—is that the legislation does these things:

(1) It requires invoicing of furs at all stages and into the hands of the manufacturer, so that each processor may be assured of the identity of what he is getting.

(2) It requires labeling of fur products, beginning with the manufacturer and continuing into the hands of the consumer; the invoices will have enabled the manufacturer to identify the constituent furs and to prepare a true and correct label.

(3) It requires invoicing of fur products from the manufacturer into the hands of the retailer.

There is good reason why step number (3) above, which overlaps or parallels the requirement of a label on the fur product, applies as between the manufacturer and the retailer and does not apply as between the retailer and the consumer. Section 3(c) and (d) of H.R. 3734 as reported in the House in the 80th Congress forbade removal of the label until the fur product was delivered to the ultimate consumer, except that "any person dealing commercially with respect to any fur product" could substitute a proper label if he had cause to believe that the label which had come to him was incorrect. Section 3(d) and (e) of the present Act are similar except they provide that a proper label may be substituted on a fur product whether or not the prior label is correct; and proper records of the change must be preserved.

Thus, there is practical reason why the retailer may need an invoice from the manufacturer, in addition to the label on the fur product. If the label does not conform to requirements or is not accurate, the retailer may be liable for passing it on; reference to the invoice may help him make certain that there is a proper label.

On the other hand, there is no reason why the consumer needs a statutory invoice in addition to the label on the fur product. She has no responsibility to pass forward a proper label to any one.

This interpretation gives complete scope and effect to the entire statute—to the statutory provisions for invoicing furs and fur products, and to the statutory definition of invoice. On the other hand, to interpret the statute as requiring an invoice from the retailer to the consumer would deny effect to the definition of invoice.

This interpretation is consonant with the whole philosophy of the Fur Products Labeling Act. The legis-

lation had its inception as purely a labeling law; originally, invoicing was not required. Early in its history the legislation was revised, so as to apply the labeling requirement to fur products only, and to let the identification of fur pelts be handled by invoices. The purpose of the invoice was to pass forward correct identifying information to each successive step or stage, so that eventually a correct identifying label could be attached.

Thus there is no need in the statutory scheme for giving a statutory invoice to the consumer in addition to the statutory label on the fur product. The duplication of requirements serves a useful purpose only in the steps from manufacturer to retailer.

The Act's definition of invoice provides exactly the limitation on invoicing requirements which we have described. The statutorily-required invoice is one which is given "in connection with any commercial dealing" describing fur products or furs delivered "to a purchaser * * * or any other person who is engaged in dealing commercially in fur products or furs."

Petitioner's brief at page 22 says that there is not "'any substantial contrary indication in the legislative history' * * *' that retail invoicing is exempt from the Act's disclosure requirements." (Presumably its citation of *Flemming* v. *Florida Citrus Exchange*, 358 U.S. 153, at this point is for the phraseology and not for the assertion; that case does not deal with this Act and does not comment on the legislative history of this Act.) It is not a matter of being "exempt," but is a question of whether the Act requires disclosure on a statutorily-regulated invoice to the consumer, who is already protected by a statutorily-regulated label.

The present inquiry would be better served by examining the legislative history for "substantial indication" that Congress intended to require that the sale slip from

retailer to consumer be subjected to regulation by statute. Petitioner points to no such indication.

Petitioner's brief at pages 20-22 refers to Congressional committee reports which it says show an "intent to give consumers broad protection against unfair and deceptive practices, including false invoicing." Elaborating the assertion, the brief strings together snatches of language from various parts of reports, but even that artificial potpourri does not spell out any declaration of an intention to require statutory invoices from the retailer to the consumer. The most the brief can make out of it is a statement of a purpose to protect consumers and others (or "consumers and scrupulous merchants") against abuses arising from improper advertising, invoicing and labeling. That is substantially a paraphrase of the title of the Act. We have discussed earlier in this brief (*supra*, p. 10) the fallacy of reading that purpose so that each object of the Act's concern is protected against each of improper labeling and improper invoicing and improper advertising of each of furs and fur products. On the contrary, some have one protection, some have another. Each is protected against such practices as his interest may require.

When the committee reports come to discuss how the law implements the stated general purpose, they uniformly and repeatedly describe the law as requiring the labeling of fur products and the invoicing of furs. (House Report No. 2004, 80th Congress, pp. 2, 3; House Report No. 919, 81st Congress, pp. 1, 2, 3; Senate Report No. 2378, 81st Congress, p. 1; House Report No. 546, 82d Congress, pp. 1, 2, 3; Senate Report No. 78, 82d Congress, p. 2. See Appendix A.)

In addition to the dichotomy described in the reports, the Act provides that fur products be invoiced to an extent limited by the definition of "invoice," i.e., to persons dealing commercially in such products. The fact that the reports do not spell out this limited overlap suggests

that it may not have been viewed as of equal importance with the other features. Whatever the reason, it is clear that, if the legislators had intended that fur products be statutorily invoiced all the way into the hands of the consumer, some report at some time would have said label fur products and invoice furs and fur products from the pelt to the consumer. None did. No report even hints that the invoice requirement extends to the retail sale of fur products.

Nor is the Commission's case advanced by its brief's general emphasis of the purpose to protect consumers. Of course consumers were among those to be protected by the legislation. The problem here is to determine how the law protects them. It is our view that consumers are given protection by the statutory label, the accuracy of which is backed up by the requirement to invoice furs and the requirement to invoice fur products and label fur products from the manufacturer to the retailer. As we have pointed out, no useful purpose would be served by duplicating the protection for the consumer, i.e., by requiring an invoice as well as a label. For the consumer, the invoice comes *after* she has made her choice of the fur product. Before the purchase, she has relied on advertising and on the label, and the law protects her in that reliance. We are dealing with what is essentially a disclosure statute, and disclosure after the consumer has purchased would be merely repetitive.

C. The administrative construction of the Act is erroneous in applying to retail sales the provisions with respect to invoices.

The question in this lawsuit is the meaning of the statute's definition of invoice and of its invoicing requirements. The Commission relies on its own administrative construction of the statute as persuasive that that construction is correct.

The brief for the Commission enumerates (and even lists in an appendix) the Fur Products Labeling Act cases in which the Commission has applied its interpretation of the Act's invoicing provisions. No one denies that the Commission has proceeded pursuant to its view that the Act applies to retail sale slips. But now we are litigating the issue of whether the Commission is right. If the Commission has erred, the fact that it has erred in a long list of complaints will not help its case. So far as we can learn, the case at bar is the first one in which a respondent has seriously contested the present issue.*

The Commission's brief, at p. 27, contends that its administrative construction of the Act should not be disturbed because it has been "long and consistently adhered to." But the statute is relatively new. It took effect in August 1952, and there has hardly been time for an administrative construction to achieve a degree of maturity putting it beyond attack.

Nor can it be said that the Commission has been consistent in its view of the statute. As we have shown, the provisions presently in issue first appeared in H.R. 3734 as reported in the 80th Congress. Subsequent to that appearance, the Commission wrote no less than six letters to Congressional committees commenting on what is, so far as concerns the present issue, exactly the law now in effect. Each of those letters — the latest one dated February 16, 1951 — described the statute as requiring "mandatory labeling of fur articles of wearing apparel and invoicing of furs." (Hearings before Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 97 and H.R. 3755, 81st Congress, pp. 28 and 30;

* Almost all of the Fur Act proceedings instituted by the Commission have been closed by agreed orders. The present case is only the second Fur Act case to be litigated. The first one was *DeGorter* v. *Federal Trade Commission*, 244 F. 2d 270, C.A. 9, which did not present the issues here in controversy.

Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 2321, 82d Congress, p. 6; House Report No. 919, 81st Congress, pp. 5 and 6; Senate Report No. 2378, 81st Congress, p. 5; House Report No. 546, 82d Congress, p. 5; Senate Report No. 78, 82d Congress, p. 5,) And that is precisely the pattern which had been advocated by Henry Miller* in testifying on H.R. 3734 and S. 1388 in the 80th Congress.

The question now is whether the Commission is correct in its subsequent view that the statute provides mandatory labeling of fur articles, and invoicing of furs and of fur articles into the hands of the consumer. We believe that the discussion in the preceding pages of this brief shows that the Act does not require a statutory invoice to the consumer on her purchase of a fur article.

Petitioner's brief at pages 26-27 repeats its earlier arguments that the consumer needs both the statutory label and the statutory invoice. Under the Act, each one of them must show the same information.

And the brief repeats the argument that the invoice is a necessary connecting link to enable the Commission to trace back to the advertising. Apparently the theory is that the label will not serve that purpose, although its information is the same as that on the invoice.

We have answered those contentions (*supra*, pp. 16-17), pointing out that the sale slip comes after the consumer has made her choice of a fur product, in reliance on the label; that there is no basis for any assumption that she will keep the sale slip rather than the label; and that it is absurd to say that Federal law requires giving her information in duplicate in order to avoid the danger that

* At the time he so testified, Mr. Miller was Director of Trade Practice Conferences and Wool Act Administration of the Federal Trade Commission. When he testified at hearings on the legislation in 1951, he was identified as Assistant General Counsel of the Commission.

she may lose one copy. We have shown that the absence of an invoice to the consumer will not inhibit any Commission activity, and that the presence of such an invoice will not enable the Commission to do anything that it could not do without the invoice.

At page 27 petitioner's brief argues that "the declared will of the legislative body could not be carried out" in the absence of a technical invoice to the consumer. This begs the question. We are litigating whether it is the "declared will" that the consumer have a statutorily regulated invoice. And we have amply shown that the "declared will" to protect consumers can be carried out and is carried out with the system of disclosure requirements culminating in a statutory label to guide the consumer's choice.

D. Under the Constitution, the Fur Act's invoicing requirements may not validly be imposed on the local sale of a fur product by the retailer to the consumer.

To read the Fur Act as requiring that the retailer prepare and give a statutory invoice upon the sale of a fur product to the consumer would give rise to the question of whether the Act in that respect is a valid exercise of Federal power.

At the time of such sale any interstate transactions have terminated, even though the component furs or the fur product itself may have previously moved in commerce under the Act. The sale in the department store is not in commerce. (See *Federal Trade Commission* v. *Bunte Brothers*, 312 U.S. 349.)

Under the holding of this Court in *Schechter Corporation* v. *United States*, 295 U.S. 495, the invoicing requirements may not be imposed on this strictly local transaction.

Nor may invoicing in connection with the intrastate transaction be sustained under the doctrine of *United*

States v. *Sullivan*, 332 U.S. 689. In that case the applicable statute required that the drug be branded or labeled while in interstate commerce and forbade the doing of any act, while the drug was held for sale after shipment in interstate commerce, which would result in its being misbranded. Thus, in addition to the labeling in commerce, the statute forbade the undoing (even in an intrastate transaction) of what had been so required and done. It demanded the maintaining of a condition which had validly originated.

Turning to the Fur Act, there may be found an analogy to the *Sullivan* case in the requirement that fur products be labeled and that the labeling be maintained until the products reach the consumer. And there is further similarity in the Fur Act's provision that a label may be removed only if it is replaced with a new label which conforms to the requirements.

But the analogy stops with labeling. Under the proposed application of the Fur Act, the retailer would have to prepare and give an invoice. This is an independent step; it is in addition to, not in perpetuation of, what has been required as the garment moved in commerce subject to regulation. (Obviously, the retailer does not pass along to the consumer the invoice on which he had purchased the garment.) The requirement would be, not that the retailer refrain from thwarting what has been done under the authority over interstate commerce, but that he take an affirmative step in a local transaction.

We submit that that independent, affirmative action may not be required in a local, intrastate transaction merely because similar action has been required in earlier interstate transactions. And we suggest that it may well be that the foregoing considerations contributed to Congress' decision not to require an invoice on the retail sale of fur products.

II. THE COURT OF APPEALS PROPERLY HELD THAT THE COMMISSION'S ORDER COULD NOT REQUIRE RESPONDENT TO CEASE AND DESIST FROM DOING THAT WHICH THE COMMISSION HAD FOUND RESPONDENT DID NOT DO.

Section 4(2) of the Fur Act specifies six items which must appear on the label on a fur product:

(A) the animal name, in conformity with the Fur Guide;

(B) that the product contains used fur, when such is the fact;

(C) that the fur is dyed, when such is the fact;

(D) that the product contains inferior parts of fur, when such is the fact;

(E) the name or registered number of the manufacturer or vendor;

(F) the country of origin of imported fur.

The Commission found that there was no evidence that respondent had violated the Act by omitting disclosure of the presence of used fur or inferior parts of fur or omitting the name of the vendor (items (B), (D) and (E) of the requirements). Yet it enjoined the omission of all six requirements, separately enumerating each one.

Respondent objected to the prohibition of violations of which it had been acquitted, not because it expects to commit those violations but because any prohibition in a cease and desist order inevitably means to the public that the prohibited violation has been committed. It is of major importance to Mandel Brothers that no order suggest that the store has sold garments containing used fur or inferior parts of fur and has concealed the fact.

The Court of Appeals rejected so much of the Commission's order as directed respondent to cease omitting from labels the items which the Commission found had not been omitted.

The basis of petitioner's attack on that holding is the ief's premise (pp. 2, 28) that the ruling of the Court of ppeals "limits the Commission to proscribing the precise beling violations which it finds."

The court below did not so hold. In its opinion, the ourt of Appeals said (R. 69-70):

> • • • We find no difficulty in subscribing to the doctrine that a cease and desist order does not have to be limited to the illegal practice in the precise form it is found to exist or that those caught violating the Act must expect some fencing in but we cannot affirm an order requiring one to cease and desist from doing that which the Commission specifically found it did not do.

The court explicitly recognized that Commission orders do not have to be limited to the particular violations found to have been committed. The only limitation imposed by the court below is a narrow one—consonant with every fundamental of our jurisprudence—that the Commission may not enjoin one from doing what it has found one did not do. No legitimate scope of Commission orders is inhibited.

The Court of Appeals did not deny to the Commission its "wide discretion" in remedying unlawful practices disclosed in its proceedings; it did not limit the Commission "to prohibiting the illegal practice in the precise form in which it is found to have existed." It held merely that, where the unlawful or illegal practice was found not to have existed, the Commission could not enjoin it.

The brief cites decisions declaring a wide discretion in the Commission's choice of a remedy, and a power to restrain "other like or related unlawful acts." But it points to no decision upholding an administrative or judicial order where those like or related acts were found not to have been committed and were nevertheless enjoined.

Moreover, in some of the very cases cited for their general enunciation of the powers of an administrative tribunal, the final result was a finding that the tribunal's order was too broad even under those general principles. In *Nationdl Labor Relations Board* v. *Express Publishing Company*, 312 U.S. 426, and in *May Department Stores* v. *National Labor Relations Board*, 326 U.S. 376, the ultimate result was a narrowing of the Board's orders. And in *Jacob Siegel Company* v. *Federal Trade Commission*, 327 U.S. 608, there was a remand so that the Commission could consider whether a more limited order might suffice.

In view of the serious nature of two of the violations of which respondent was acquitted, and the obvious damage to good will of a suggestion that they had occurred, it was perhaps an abuse of discretion for the Commission to enjoin them. In *Siegel Company, supra,* this Court held that the Commission should have considered whether some change in the name or some qualifying language would have been sufficient to satisfy the law and still not destroy Siegel's "Alpacuna" trade name. A store's good will is as much a property right as is a trade name. A similar solicitude for property rights in the present case would demand considering whether the Commission's order must stigmatize respondent by suggesting, contrary to the fact, that the store had sold garments containing used fur or inferior parts of fur and had failed to disclose it.

Petitioner argues at page 30 that expected violations may be enjoined along with violations which have occurred, and that a retailer who has omitted some categories of information on labels may be expected to omit others. The Commission did not justify its order with any such forecast and made no finding which would support it. Of course the Act equally requires each of the six categories of information, but that is not to say that the omission of one is just as injurious as is the omission of another. It is common knowledge that many furs are dyed and that

many garments contain imported furs; failure to show those facts on a label is not as intrinsically reprehensible as would be failure to disclose the presence of used or inferior fur. The occurrence of violations of a less serious quality affords no basis for sound expectation that there will occur other violations of a truly serious nature. Moreover, a respondent who is under an order to label properly, with specific enumeration of the three items wherein he has been found delinquent, is hardly likely to risk further proceedings by violating the other three categories in which he has once been found not remiss.

Petitioner's brief argues at pages 30-31 that further and enlarged violations are to be expected because Commission investigations in Mandel Brothers store disclosed violations in September 1952 and violations in October 1954. There is nothing to warrant the accusation of obduracy. Warning and instruction after the first inspection might have been helpful. But the record shows that there was no such communication after either of the investigator's visits. (See Appendix B, *infra.*) Moreover, the testimony shows that there were fewer errors in 1954 than there were in 1952. (R. 49-55)

From whatever standpoint, there is simply no justification for the Commission's proscription of labeling violations of which it had acquitted respondent, and the Court of Appeals properly narrowed the scope of the order.

The brief argues at page 30 that the various categories of information do not give rise to separate offenses, that misbranding is a single offense. The Commission's final order did not so treat the matter, but specified each category in detail. But even if the view be accepted that the violation is composite, that it is the failure of the label to set forth each element required by the statute, the same considerations as above set forth are still applicable.

The order of the Commission was not that respondent cease and desist from "misbranding fur products by failing to affix labels to fur products showing each element of information required by the Act." The order went further, and enumerated in detail each statutory element of information. We submit that, if the Commission chooses to command obedience to the statute by reciting in particular each statutory element, it may not include in that particularization the elements with respect to which it had specifically found no violation.

The brief argues at pages 33-34 that under the decision below the Commission would have to bring new proceedings to deal with subsequent violations not theretofore resorted to. But the advantage of avoiding "multiplicity of actions" cannot warrant the enjoining of violations at large, and *a fortiori* cannot warrant enjoining violations which were found not to have occurred. As this Court said in *National Labor Relations Board* v. *Express Publishing Company*, 312 U.S. 426, 433, 437:

> It would seem equally clear that the authority conferred on the Board to restrain the practice which it has found the employer to have committed is not an authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct.
>
> * * * * *
>
> We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found.

Finally, it is quite impossible to see how the Court of Appeals decision on this point would impede the Commission in any proper function. The way is still open for prohibiting whatever illegal activities may have been dis-

closed, together with related variations on those activities. The only "fencing in" of the Commission is that it may not specifically require one "to cease and desist from doing that which the Commission specifically found it did not do."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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APPENDIX A

The following material traces the legislative history of the invoicing provisions of the Fur Products Labeling Act and of the definition of "invoice" in section 2(f) of that Act.

80TH CONGRESS

H.R. 3734, as introduced by Representive O'Hara in the 80th Congress, required that each skin of any imported fur be labeled before its release from Customs; that the same label be put back on each such imported skin after each step in its processing; and that the label remain on each such skin until it was manufactured into a garment. It required the labeling of fur articles, beginning with the manufacture or introduction into commerce of such fur article, the labels to remain until the article was sold to the consumer. The bill contained no definition of the term "invoice." It specified certain representations which would be deemed false in invoicing, but did not require the giving of any invoice (except Customs invoices on imports).

S. 1388, as introduced in the 80th Congress by Senators Johnson and McCarthy, was substantially the same as H.R. 3734.

In the hearings on H.R. 3734 before the House Committee on Interstate and Foreign Commerce (April 6 and 7, 1948) representatives of fur buyers, processors and manufacturers bitterly opposed any legislation. They complained that it would be impossible to maintain the required labeling on each imported pelt all the way through the complicated processes of dressing raw skins and dyeing them. They did not discuss the bill's scant invoicing provisions. Some of those witnesses, apparently as an alternative to the proposed scheme, suggested that disclosure of proper information might be effectuated by requiring an invoice from the retailer to the consumer.

Later in the hearings there was testimony by Henry Miller, Director of the Bureau of Trade Practice Confer-

ences and Wool Act Administration of the Federal Trade Commission, as follows:

> Representations have been made here about the invoice. Now, having a good invoice is a help. I feel, however, that it by no means can reach a situation as simply and as effectively as a tag.
>
> An invoice is a thing that takes place after the sale has been consummated. It is locking the barn door after the horse has been stolen, in a way.
>
> A label is prophylactic; it is preventive. The consumer comes in, and she sees a whole rack of coats there. She may be in doubt as to what she wants to buy. Some of them are not in doubt. Some come in there, and they ask for a particular type of coat. When they see the label they are apt to be apprised of the truth at the time.
>
> It is important to them to have the truth before they actually make the contract to purchase.
>
> With all due respect to the fact that a good invoice is a good thing to have, I feel that a good label on the product itself simply giving the truth is a more effective remedy.
>
> It is not an easy thing for a retailer, a retail store, to sit down and execute an invoice for every purchase. A manufacturer sends invoices because he ships in quantity. But a retail store will make many sales during the day, and it would be rather irksome and cumbersome, I think—I fear—if the retail store were required to execute an invoice at every sale at the time of sale.
>
> Someone may say, "They can mail the invoice a little later." That is possible. But there, again, I say the whole thing involves considerable more effort, considerable more machinery, than to have a simple tag on the article itself.

(House Hearings on H.R. 3734, 80th Congress, p. 202.)

In the hearings on S. 1388 before a subcommittee of the Senate Committee on Interstate and Foreign Commerce,

on April 12 and 28, 1948, Mr. Miller was questioned and testified as follows:

SENATOR MCCARTHY: I do not know whether you were here this morning or not, Mr. Miller, but I had in mind that we might be able to simplify the enforcement of this Act and make it less obnoxious to the trade up to a certain point without defeating the purpose of the Act by providing that instead of the individual labeling of the pelts up to the manufacturer's level, that be handled by invoicing. Do you think that could be done without defeating the purpose of this Act?

MR. MILLER: I do.

Covering the necessary information in an invoice rather than in a label with respect to the raw fur from the time either imported or introduced into the channel of commerce, and trapped in this country, up through the various stages until it becomes a dyed and dressed pelt, and is then produced into a fur coat, for example, up to that point, I think it can be adequately covered, the necessary information by invoice; consequently, dispense with the necessity of attempting to mark the individual pelt.

SENATOR MCCARTHY: It would be easier of administration, I assume, also?

MR. MILLER: I think that can be provided for by having the legislation provide for the invoice to cover the necessary information and, of course, applying the prohibitory provisions to an invoice to prevent false invoicing and misrepresentation.

SENATOR CAPEHART: You are talking about invoice to whom?

MR. MILLER: The invoice of any seller to his customer so long as the fur has not become a finished product.

SENATOR CAPEHART: Let us start with the importing. Do you mean the foreign seller to invoice it in a certain way to the importer?

MR. MILLER: That is true.

SENATOR CAPEHART: And the importer, in turn, invoice in a certain way to the producer or processor?

MR. MILLER: That is correct.

SENATOR CAPEHART: And then the processor invoices in a certain way to the manufacturer?

MR. MILLER: That is right.

SENATOR CAPEHART: And then the manufacturer invoices in a certain way to the wholesaler?

MR. MILLER: That is right.

SENATOR CAPEHART: And the wholesaler invoices in a certain way to the retailer?

MR. MILLER: When you speak of wholesaler and retailer, I assume you are still talking with respect to the unfinished product; that is, the raw fur or the fur that has not yet become a part of a coat.

When the manufacturer converts the thing into a coat, makes, for example, the muskrat coat, a tag or label showing the fur that is in that coat is then to be required to be on the product, and from there on it remains with the product.

It is a finished product and ready for the channels of trade that takes it on to the ultimate consumer in that form.

With respect to invoicing, foreign furs, when they come in just like any other foreign products, are already invoiced under a sworn consular invoice showing the country of origin and character of product. It is shown quite in considerable detail.

That is an invoice required by statute. A copy of it goes to the importer, and it is also used in the Customs entry.

So the person who receives the merchandise in this country from abroad has that information already provided for him under a legally required invoice, and from there on he has the information that will enable him to invoice it to his customer and his customer to the next customer, until it gets into a manufactured article ready to go into the channels of trade for distribution through to the ultimate consumer.

* * * * *

SENATOR CAPEHART: Let me ask you this, Mr. Miller: If you are going to get a law, and I do not know whether you are or not, that requires that every fur piece be labeled by the manufacturer, and that law has teeth in it, and he is subject to prosecution if he mislabels it, then what do you care about this invoicing business in between? You are only interested in the consumer.

MR. MILLER: When an intermediate man acts in good faith in following what he thought he was buying, indicated usually by the invoice, he should be protected against that.

SENATOR CAPEHART: I am not so sure we should worry so much about protecting the wholesaler and manufacturer. If he can not protect himself on the kind of merchandise he buys and quality, I am not so sure we should protect him. We are only interested in the consumer, are we not?

MR. MILLER: I am interested in fair competition and reasonable protection of everybody who is in this continuous chain.

SENATOR CAPEHART: Do you not get that protection if you require the manufacturer to label it? If he is mislabeling it, he is subject to prosecution. Why do you want to go back and burden the industry with rules and regulations up to that point? I do not know anything about the fur business, you know.

SENATOR MCCARTHY: May I interrupt there, Mr. Chairman?

SENATOR CAPEHART: Yes.

SENATOR MCCARTHY: I think you are talking about two different things. What Mr. Miller proposes is that up to the labeling point you have an invoice for the protection of the men along the way so you can trace it back and find out where and when the deception started.

Once the manufacturer obtains the article, it is then labeled, and from that point on, you are not concerned with any invoice.

MR. MILLER: That is right.

SENATOR MCCARTHY: You are merely substituting invoice prior to manufacturer's level to make this simpler of enforcement, less expensive.

MR. MILLER: That is true.

(Senate hearings on S. 1388, 80th Congress, pp. 159-163, 184-186.)

After the hearings, H.R. 3734 was completely revised and there was reported to the House what the report characterized as a "substitute" bill. The reported bill

set forth a definition of invoice which is precisely the same as the definition in the present law. The structure and general features of the reported bill correspond closely to those of the present law, including the provision for invoicing of furs and fur products.

The report accompanying H.R. 3734 contained the following statements:

> The committee substitute is generally modeled after the Wool Products Labeling Act of 1939, and requires mandatory *invoicing of furs* and *labeling of fur products* moving in interstate or foreign commerce to show the true English name of the animal; its country of origin; the fact that the garment contains used fur if such is the case; the fact that the fur is dyed if such is the case, and the fact that the fur product is composed of bits and pieces instead of whole skins if such is the case.
>
> * * * * *
>
> The committee substitute makes it unlawful and declares it an unfair and deceptive act and practice within the meaning of the Federal Trade Commission Act to market in interstate or foreign commerce either *furs* or *fur products* which are not *respectively invoiced and labeled* to show the true English name of the animal, its origin, and other factual information affecting the value of both furs and fur products.
>
> * * * * *
>
> With respect to *furs*, the information required by this legislation is to be passed on by the means of *invoices*. In respect to *fur products*, *labeling* is required which begins with the manufacturer of the fur product. Removal of the manufacturer's label is forbidden until the article reaches the ultimate consumer.

(House Report No. 2004, 80th Congress, pp. 2, 3; emphasis added.)

No further action was taken on H.R. 3734 in the 80th Congress.

The Senate Committee did not report S. 1388. However, the authors of the bill, Senators Johnson and McCarthy, introduced a new bill, S. 2703, which was substantially identical with H.R.3734 as reported in the House. The new S. 2703 was introduced in the Senate on May 19, 1948; the revised H.R. 3734 was reported in the House on May 20, 1948. The obvious assumption is that both bills were written in the light of the testimony above referred to in the April, 1948 hearings before the House Committee and the Senate Subcommittee.

81ST CONGRESS

H.R. 97 and H.R. 3755, in the 81st Congress, were the same as H.R. 3734 as reported, and the same as S. 2703 as introduced, in the 80th Congress. Their definition of invoice is identical with the definition of invoice in existing law; their provisions as to invoice requirements are substantially the same as those in existing law.

In a letter dated February 15, 1949, to Robert Crosser, Chairman, House Committee on Interstate and Foreign Commerce, Lowell B. Mason, Acting Chairman of the Federal Trade Commission, responded to the former's request for comment on H.R. 97. The letter included the following statement:

> The proposed legislation requires mandatory *labeling of fur products* and *invoicing of furs* moving in interstate or foreign commerce to show the true English name of the animal; its country of origin; and, when such is the case, the fact that the garment contains used fur, or that the furs are dyed, or that the fur product is composed of bits and pieces instead of whole skins. It further requires that when fur products or furs are advertised in commerce that such important facts also be truthfully disclosed.

(House Committee Hearings on H.R. 97 and H.R. 3755, 81st Congress, p. 28; emphasis added.)

In a letter to Mr. Crosser dated April 21, 1949, Mr. Mason made the same comment on H.R. 3755 as is above quoted with respect to H.R. 97. (Same Hearings, p. 30.)

The hearings on H.R. 97 and H.R. 3755 include no comment with respect to the definition of invoice.

After the hearings, the House Committee on Interstate and Foreign Commerce reported a "clean" bill, H.R. 5187; it was quite similar to the original bills.

House Report No. 919, 81st Congress, accompanying H.R. 5187, said:

> The bill is generally modeled after the Wool Products Labeling Act of 1939 and requires mandatory *invoicing of furs* and *labeling of fur products* moving in interstate or foreign commerce to show the name of the animal that produced the fur as set forth in the fur products name guide; the fact that the garment contains used fur if such is the case; the fact that the fur is dyed or bleached if such is the case; and the fact that the fur product is composed of paws, tails, bellies or waste fur if such is the case. . . .
>
> . . . . .
>
> The bill makes it unlawful and declares it an unfair and deceptive act and practice within the meaning of the Federal Trade Commission Act to market in interstate or foreign commerce either *furs* or *fur products* which are not *respectively invoiced and labeled* to show the true name of the animal, and other factual information affecting the value of both furs and fur products.
>
> . . . . .
>
> With respect to *furs*, the information required by this legislation is to be passed on by the means of *invoices*. In respect to *fur products*, *labeling* is required which begins with the manufacturer of the fur product. Removal of the required label is forbidden until the article reaches the ultimate consumer. However, a wholesaler or retailer subject to the affirmative disclosure requirements of the act, may substitute his own label for that of the manufacturer.

(House Report 919, 81st Congress, pp. 1, 2, 3; emphasis added.)

H.R. 5187 passed the House. In discussing the bill on the floor of the House, its sponsor, Congressman O'Hara, said:

> The remedy suggested in this bill is the mandatory *invoicing of furs* and the mandatory *labeling of fur products* moving in interstate or foreign commerce, under the usual name of the animal that produced the fur.

(Congressional Record, July 14, 1949, p. 9700; emphasis added.)

Congressman O'Hara testified before a subcommittee of the Committee on Interstate and Foreign Commerce of the Senate, with respect to H.R. 5187. At p. 15 of those hearings he made precisely the same statement as is above quoted from the House debate.

H.R. 5187 was reported in the Senate with relatively minor changes, not material to this case. The features of particular interest in this discussion, the definition of invoice and the requirement of invoicing, were not changed.

The Committee report said:

> • • • The bill requires mandatory *labeling of fur articles* of wearing apparel and *invoicing of furs* moving in interstate or foreign commerce to show the name of the animal that produced the fur, and when such is the case the fact that the garment contained used fur or that the furs are bleached or dyed or that the fur product is composed of inferior pieces such as paws, tails, bellies, or waste fur. • • •

The report quoted a letter dated July 27, 1949, to Senator Johnson, Chairman of the Committee, from Mr. Mason, Acting Chairman of the Federal Trade Commission. That letter made the following comment on H.R. 5187:

> The proposed legislation requires mandatory *labeling of fur articles* of wearing apparel and *invoicing of furs* moving in interstate or foreign commerce to show the name (as set forth in the Fur Products Name Guide) of the animal that produced the fur, and when such is the case the fact that the garment contained used fur or that the furs are bleached or dyed or that the fur product is composed of inferior pieces such as paws, tails, bellies, or waste fur. * * *

(Senate Report No. 2378, 81st Congress, pp. 1, 5; emphasis added.)

H.R. 5187 remained on the Senate calendar at adjournment of the 81st Congress.

82D CONGRESS

In the 82d Congress, Representative O'Hara again introduced his bill—H.R. 2321. It was similar to the bill in the preceding Congress, and was identical in its definition of invoice and in its requirements of invoicing. H.R. 2321 was the subject of hearings before the House Committee on Interstate and Foreign Commerce. The report of the hearings quotes a letter dated February 16, 1951, to Mr. Crosser, Chairman of the Committee, from James M. Mead, Chairman of the Federal Trade Commission. That letter included the following statement:

> The proposed legislation requires mandatory *labeling of fur articles* of wearing apparel and *invoicing of furs* moving in interstate or foreign commerce to show the name (as set forth in the fur products name guide) of the animal that produced the fur, and when such is the case the fact that the garment contained used fur or that the furs are bleached or dyed or that the fur product is composed of inferior pieces such as paws, tails, bellies, or waste fur. * * *

(House Committee Hearings on H.R. 2321, 82d Congress, p. 6; emphasis added.)

Congressman O'Hara stated in the hearings that the bill was designed to protect consumers from the practice of

using false or misleading statements in advertisements, of foreign animal names and glamorous, fictitious names for furs and fur products. He said:

> The remedy suggested in this bill is the mandatory *invoicing of furs* and the mandatory *labeling of fur products* moving in interstate or foreign commerce under the usual name of the animal that produced the fur.

(Same Hearings, pp. 12-13; emphasis added.)

Henry Miller, by then Assistant General Counsel of the Federal Trade Commission, testified on the bill. Among other things he said:

> * * * Consequently, the insistence upon truthful labeling down through the channels of trade to the ultimate consumer will provide a corrective not only with respect to labeling but also with respect to advertising, where the source of evil largely resides.

(Same Hearings, pp. 21-22.)

The Report on H.R. 2321 carries the following statements:

> The bill is generally modeled after the Wool Products Labeling Act of 1939 and requires mandatory *invoicing of furs* and *labeling of fur products* moving in interstate or foreign commerce to show the name of the animal that produced the fur as set forth in the fur products name guide * * *.
>
> The bill makes it unlawful and declares it an unfair and deceptive act and practice within the meaning of the Federal Trade Commission Act to market in interstate or foreign commerce either *furs* or *fur products* which are not *respectively invoiced and labeled* to show the true name of the animal, and other factual information affecting the value of both furs and fur products.
>
> * * * * * *
>
> With respect to *furs*, the information required by this legislation is to be passed on by the means of *in-*

voices. In respect to *fur products, labeling* is required which begins with the manufacturer of the fur product. Removal of the required label is forbidden until the article reaches the ultimate consumer. However, a wholesaler or retailer who sells, advertises, or offers for sale in commerce, or processes for commerce, a fur product, may substitute his own label for that of the manufacturer.

(House Report No. 546, 82d Congress, pp. 1, 2, 3; emphasis added.)

H.R. 2321 passed the House. Meantime the Senate Committee on Interstate and Foreign Commerce had reported a similar bill, S. 508. The Committee Report thereon said:

> • • • The bill requires mandatory *labeling of fur articles* of wearing apparel and *invoicing of furs* moving in interstate or foreign commerce to show the name of the animal that produced the fur, the country of origin, and when such is the case the fact that the garment contained used fur or that the furs are bleached or dyed or that the fur product is composed of inferior pieces such as paws, tails, bellies, or waste fur. • • •

The Report also quoted a letter dated January 23, 1951 to Senator Johnson from Chairman Mead of the Federal Trade Commission saying:

> The proposed legislation requires mandatory *labeling of fur articles* of wearing apparel and *invoicing of furs* moving in interstate or foreign commerce to show the name (as set forth in the Fur Products Name Guide) of the animal that produced the fur, and when such is the case the fact that the garment contained used fur or that the furs are bleached or dyed or that the fur product is composed of inferior pieces such as paws, tails, bellies, or waste fur. • • •

(Senate Report No. 78, 82d Congress, pp. 2, 5; emphasis added.)

The language of S. 508 was substituted in H.R. 2321 in the Senate and thus passed. In conference, a slightly dif-

ferent version was substituted, but still with no change in the provisions which are here pertinent. The Conference Report said:

> Both the House bill and the Senate amendment provided that fur products shall be considered to be misbranded, and that furs or fur products shall be considered to be falsely or deceptively advertised or invoiced, unless certain specified information is shown in the labeling, advertising, or invoice. * * *

(House Report No. 769, 82d Congress, p. 10.)

The Conference Report was approved and the law was enacted.

APPENDIX B

Following are excerpts from the testimony before Hearing Examiner Robert L. Piper in the hearings pursuant to the F.T.C. complaint herein. The page references are to the paging of the original transcript of testimony. (In the stipulation as to printing the record, it was agreed that any party might refer, in its brief or oral argument, to any part of the record filed in this Court which has not been printed. The testimony here set forth is in the certified record but is not printed. This testimony has been cited in the brief, and is here reproduced for convenience of reference.)

(ROBERT CAMENISCH, F.T.C. investigator, testifying upon examination by Mr. Blood, counsel for Mandel Brothers, Inc.)

Q. The Complaint in this case was filed on October 27, I think it was, late in October, of 1955. Was that Complaint prepared by you?

A. No, it wasn't.

Q. Was it submitted to you to examine before it was filed?

A. No.

Q. You had not seen it before it was filed?
A. No.

MR. BLOOD: The reason, your honor, that I am asking is that the matters with respect to labeling which he testified to, most of which are not mentioned in the Complaint, three out of the 8 things he testified regarding, are mentioned in the Complaint; the other 5 are not.

By MR. BLOOD:

Q. After you made your investigation in the fall of 1952 was there any communication so far as your knowledge is concerned made with Mandel Brothers with respect to the matters you had investigated?
A. Not insofar as I had any knowledge of.

* * *

Q. Mr. Camenisch, I asked you a little bit earlier in this examination about whether so far as you knew, any communication was made with Mandel Brothers with respect to the matters you referred to where you said according to your knowledge you didn't know of any, would that be true of 1954 as well as 1952? I think my question was directed before, of 1952; I am not sure. I wanted to be sure the question covered both.
A. I don't know of any. No, I don't know of any communication or any contact that they had.

MR. BLOOD: That is all.

(T. 111-112, 116)

(BERNARD B. BERNSTEIN, witness for Mandel Brothers, Inc., testifying upon examination by MR. BLOOD)

Q. Did Mr. Camenisch communicate with you after these two visits and request you to make any changes with respect to your labeling in the Subway Store?
A. No, sir.

(T. 143)